

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

SALVADOR J. ZAVALA,

Plaintiff,

v.

Civ. No. 24-292 GBW

MARTIN O'MALLEY, *Commissioner of the
Social Security Administration,*

Defendant.

ORDER DENYING LEAVE TO PROCEED IN FORMA PAUPERIS

This matter comes before the Court on Plaintiff's Application to Proceed in District Court Without Prepaying Fees or Costs (Short Form). *Doc. 2*. For the reasons given below, Plaintiff's Application is DENIED without prejudice.

The statute governing proceedings in forma pauperis, 28 U.S.C. § 1915(a), provides that the Court may authorize the commencement of any suit without prepayment of fees by a person who submits an affidavit that includes a description of all assets the person possesses as well as a statement that the person is unable to pay such fees.

When a district court receives an application for leave to proceed in forma pauperis, it should examine the papers and determine if the requirements of [28 U.S.C.] § 1915(a) are satisfied. If they are, leave should be granted.

Thereafter, if the court finds that the allegations of poverty are untrue or that the action is frivolous or malicious, it may dismiss the case[.]

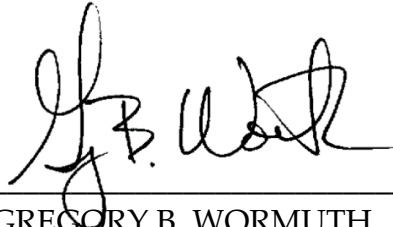
Menefee v. Werholtz, 368 F. App'x 879, 884 (10th Cir. 2010) (unpublished) (quoting *Ragan*

v. Cox, 305 F.2d 58, 60 (10th Cir. 1962)). “[A]n application to proceed *in forma pauperis* should be evaluated in light of the applicant’s present financial status.” *Scherer v. Kansas*, 263 F. App’x 667, 669 (10th Cir. 2008) (unpublished) (citing *Holmes v. Hardy*, 852 F.2d 151, 153 (5th Cir. 1988)). “The statute [allowing a litigant to proceed *in forma pauperis*] was intended for the benefit of those too poor to pay or give security for costs[.]” *Adkins v. E.I. DuPont De Nemours & Co.*, 335 U.S. 331, 344 (1948). While a litigant need not be “absolutely destitute,” “an affidavit is sufficient which states that one cannot because of his poverty pay or give security for the costs and still be able to provide himself and dependents with the necessities of life.” *Id.* at 339.

The Court will deny Plaintiff’s Motion to proceed in forma pauperis because it does not have sufficient information about Plaintiff’s monthly income to verify that Plaintiff is unable to pay the cost of the proceedings. If Plaintiff wishes to refile an application to proceed *in forma pauperis*, Plaintiff shall use the Application to Proceed in District Court Without Prepaying Fees or Costs (Long Form) (AO 239)¹, and Plaintiff shall explicitly state his monthly income and monthly expenses.

IT IS THEREFORE ORDERED that Plaintiff’s Motion for Leave to Proceed In Forma Pauperis (*doc.* 2) is DENIED without prejudice as to the refiling of the application.

¹ The AO 239 Form may be found at: <https://www.uscourts.gov/forms/fee-waiver-application-forms/application-proceed-district-court-without-prepaying-fees-or>

A handwritten signature in black ink, appearing to read 'G.B. Wormuth', is positioned above a horizontal line.

GREGORY B. WORMUTH
CHIEF UNITED STATES MAGISTRATE JUDGE